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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
In re	:	Case No. 08-04105
REFCO INC., et al.,	:	
Debtors.	:	(Referred to Judge Gerard E. Lynch)
	:	
-----X		

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**LIMITED OBJECTION TO ARCH INSURANCE COMPANY'S
MOTION TO WITHDRAW REFERENCE TO THE BANKRUPTCY COURT**

-----X	
In re	:
REFCO INC., et al.,	:
Debtors.	:
	:
-----X	
JOSEPH MURPHY, WILLIAM M. SEXTON, DENNIS	:
A. KLEJNA, GERALD SHERER, PHILIP	:
SILVERMAN, RICHARD N. OUTRIDGE, TONE	:
GRANT, LEO R. BREITMAN, NATHAN GANTCHER,	:
DAVID V. HARKINS, SCOTT L. JAECKEL, THOMAS	:
H. LEE, RONALD L. O'KELLEY, AND SCOTT A.	:
SCHOEN,	:
Plaintiffs,	:
v.	:
	:
ALLIED WORLD ASSURANCE COMPANY (U.S.),	:
INC. and ARCH INSURANCE COMPANY,	:
	:
Defendants, and	:
	:
JOHN D. AGOGLIA, EDWIN L. COX, SUKHMEET	:
DHILLON, THOMAS H. DITTMER, STEPHEN	:
GRADY, THOMAS HACKL, ERIC G. LIPOFF, PETER	:
MCCARTHY and FRANK MUTTERER.	:
	:
Nominal Defendants.	:
-----X	

Plaintiffs William M. Sexton, Gerald Sherer, Philip Silverman, Joseph Murphy, Richard N. Outridge, Leo R. Breitman, Nathan Gantcher, David V. Harkins, Scott L. Jaeckel, Thomas H. Lee, Ronald L. O'Kelley, Scott A. Schoen, Dennis A. Klejna and Tone N. Grant (collectively, the "Insureds"), each a former officer or director of Refco, Inc. ("Refco"), or one of its direct or indirect subsidiaries, hereby submit this limited objection to Arch Insurance Company's ("Arch") motion to withdraw the reference to the Bankruptcy Court (the "Motion"), and respectfully represent:

1. Arch and Allied World Assurance Co. (U.S.), Inc. (“Allied World”) are defendants in the above-captioned adversary proceeding (the “Adversary Proceeding”), commenced by the Insureds in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). In the Adversary Proceeding, the Insureds are seeking a determination that the excess insurance policies issued by Allied World and Arch cover certain losses incurred by the Insureds in connection with litigations stemming from the collapse of Refco.

2. On April 30, 2008, Allied World filed a motion to withdraw the reference to the Adversary Proceeding so that such case could be heard by this Court. The Insureds are consenting to Allied World’s motion¹ because separate coverage litigation involving two of Refco’s other excess D&O insurance carriers, Axis Reinsurance Company and XL Specialty Insurance Company are already pending before this Court.² The Insureds believe that all the coverage litigations involve many common issues and that withdrawal of the reference is consistent with, and will promote, judicial economy and fairness.

3. On May 1, 2008, Arch filed the Motion seeking to withdraw the reference to the Adversary Proceeding, but only as to Arch. The Insureds object to the Motion to the extent that it would not result in the withdrawal of the reference for the entire Adversary Proceeding.³

¹ Filed contemporaneously herewith, the Insureds have submitted their consent to Allied World’s motion to withdraw the reference.

² *XL Specialty Ins. Co. v. Agolia*, No. 08-CV-3821 (S.D.N.Y. Apr. 22, 2008); *Axis Reinsurance Co. v. Bennett*, No. 07-CV-7924 (S.D.N.Y. Sept. 7, 2007) and Adv. Pro. No. 07-01712 (Bankr. S.D.N.Y. May 23, 2007), reference withdrawn, No. 08-CV-3242.

³ Arch recently sent a letter to this Court, dated May 9, 2008, in which it conceded that the Motion would be moot if the Court granted the motion to withdraw the reference filed by Allied World. Notably, despite the Insureds’ request to do so, Arch did not withdraw the Motion even though it had been advised that the Insureds were consenting to Allied World’s motion.

4. In the Motion, Arch accuses the Insureds of forum shopping on the grounds that the Insureds commenced the Adversary Proceeding in the Bankruptcy Court when they had previously objected to Arch's intervention in the insurance coverage adversary proceeding commenced by Axis (the "Axis Case").

5. Arch's accusations are baseless. The Insureds commenced the Adversary Proceeding in the Bankruptcy Court because that court was the proper initial forum for a controversy involving assets of Refco's chapter 11 estates – the various excess insurance policies.⁴ Moreover, the Bankruptcy Court already had extensive exposure to the issues concerning the advancement of defense costs, the payment of which is mandated by the primary D&O policy to which the excess policies of Axis, Allied World, and Arch follow form. In any event, Arch had been advised before it filed the Motion that the Insureds were consenting to withdraw the reference to the Adversary Proceeding so that this Court could consider all the coverage issues together.⁵

6. Certain of the Insureds opposed Arch's intervention in the Axis Case because Arch sought to inject facts and issues into that adversary proceeding that were beyond the scope of the issues before the Bankruptcy Court at that time. Specifically, Arch sought to have the Bankruptcy Court separately construe its policy with respect to advancement of defense costs at a time when no demand for advancement had been made of Arch. As such, the Insureds were

⁴ The tower of Refco's D&O insurance is as follows: (1) U.S. Specialty Insurance Company (\$10 million primary coverage); (2) Lexington Insurance Company (\$7.5 million excess of \$10 million); (3) Axis Reinsurance Company (\$10 million excess of \$17.5 million); (4) Allied World Assurance Company (\$12.5 million excess of \$27.5 million); (5) Arch Insurance Company (\$10 million excess of \$40 million); and (6) XL Insurance Company (\$20 million excess of \$50 million).

⁵ Consistent with that position, the Insureds have filed a motion seeking to dismiss or stay an action commenced by Arch in New York State Supreme Court on the issue of coverage so that the common coverage issues as to Allied World and Arch can proceed together.

well within their right to oppose Arch's motion to intervene, and the fact that the Insureds now seek to consolidate the coverage disputes in *this Court* does not constitute forum shopping.

7. Arch's accusations that the Insureds are forum shopping are further contradicted by the fact that the Insureds are consenting to Allied World's motion to withdraw the reference as to the entire Adversary Proceeding. The Insureds believe that it would be most efficient for all coverage related disputes with Refco's D&O insurance carriers to proceed in this Court.

WHEREFORE, the Insureds respectfully request that this Court enter an order granting Allied World's motion to withdraw the reference to the Bankruptcy Court for the Adversary Proceeding, denying Arch's motion insofar as it seeks to withdraw the reference only for the claims against Arch, and granting such other relief as is just.

Dated: May 13, 2008

Respectfully submitted,

/s/ Michael F. Walsh

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